

### **Remarks**

This application has been carefully reviewed in light of the Office Action mailed July 24, 2008. By this Amendment, Applicant has amended claims 1, 3, 10, 13, 17, 34-35, and 40; canceled claims 12, 30 and 39; and added new claims 41-42. No new matter has been introduced by these amendments. Applicant does not admit that these amendments were necessary as a result of any cited art. Applicant thanks the Examiner for the indication of allowable matter. Applicant respectfully requests reconsideration of the above application in view of the following remarks.

#### **Rejections Under 35 U.S.C. § 103**

Claims 1, 6-9, 18, 22-25, and 34-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hanko, et al.* U.S. Patent No. 6,438,141 in view of *Porikli, et al.* U.S. Patent No. 7,027,403.

Claim 1 has been amended to include the allowable matter of claim 12. As such, Applicant respectfully requests that the Examiner withdraw the rejection to claim 1. Claims 6-9, 36-38, and 40 depend directly or indirectly from claim 1 and are believed to be allowable for at least the reason presented above as well as their own patentable limitations.

Claim 17 has been amended to include the allowable matter of claim 30. As such, Applicant respectfully requests that the Examiner withdraw the rejection to claim 30. Claims 18 and 22-25 depend directly or indirectly from claim 17 and are believed to be allowable for at least the reason present above as well as their own patentable limitations.

Claim 34 has been amended to include the allowable matter of claim 26. The Examiner noted that claim 26 would be allowable so long as all limitations of the base claim and intervening claims were included. Applicants note that claim 34 includes the matter of claim

26 and the intervening claim 25. As such, Applicant respectfully requests that the Examiner withdraw the rejection to claim 34.

Claims 41-42 depend directly or indirectly from claim 34 and are believed to allowable for at least the reason presented above as well as their own patentable limitations.

Claim 35 has been amended to include measuring a round trip time associated with communications between the first data communication device and the second data communication device; and comparing a threshold value to the measured round trip time to determine whether to set the bandwidth metric to one of a higher and lower value than that of the actual bandwidth. Such limitations are not taught, suggested or disclosed in the art of record. Applicant respectfully request that the Examiner withdraw the rejection to claim 35.

Applicant respectfully request reconsideration of this rejection because the proposed combination of *Hanko et al.* and *Porikli et al.* fails to teach, disclose, or suggest the features of the pending claims.

Claims 3-5 and 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hanko et al.* U.S. Patent No. 6,438,141 in view of *Porikli et al.* U.S. Patent No. 7,027,403 in view of *Tolety* U.S. Patent No. 6,996,132.

Claims 3-5 depend directly or indirectly from claim 1 and are believed to be allowable for at least the reasons presented above as well as their own patentable limitations.

Claims 19-21 depend directly or indirectly from claim 17 and are believed to be allowable for at least the reasons presented above as well as their own patentable limitations.

### **Conclusion**

Applicant does not acquiesce to the Examiner's characterizations of the art. For brevity and to advance prosecution, Applicant may not have addressed all characterizations of

the art and reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by Applicant to any of the Examiner's positions does not constitute a concession to the Examiner's positions. The fact that Applicant's comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. Applicant submits that all of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

For the foregoing reasons, Applicant believes that the Office Action mailed July 24, 2008 has been fully responded to. Consequently, in view of the above amendments and remarks, Applicant respectfully submits that the application is in condition for allowance, for which allowance is respectfully requested.

If the Examiner believes a telephone interview would advance prosecution of the application in any manner, the Examiner is invited to contact Martin J. Sultana, representative of Applicants, at the Examiner's convenience at (248) 358-4400.

Please charge any fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978.

Respectfully submitted,

**John Kent Peacock**

By /Martin J. Sultana/  
Martin J. Sultana  
Reg. No. 57,739  
Attorney/Agent for Applicant

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**BROOKS KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075-1238  
Phone: 248-358-4400  
Fax: 248-358-3351